

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO.2:12-CR-20-MHT-CSC
)	
)	
)	
CHIQUITA SMITH)	

PLEA AGREEMENT

DEFENSE COUNSEL: VALERIE MURRY SMEDLEY

ASSISTANT U.S. ATTORNEY: W. BRENT WOODALL

COUNTS AND STATUTES CHARGED:

Count 1 18 U.S.C. § 286

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, ...

Counts 2-8 18 U.S.C. § 1028(a)(7)

(a) Whoever, in a circumstance described in subsection (c) of this section--

(7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law;

COUNTS PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1 18 U.S.C. § 286

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, ...

Count 2 18 U.S.C. § 1028(a)(7)

(a) Whoever, in a circumstance described in subsection (c) of this section--

(7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law;

PENALTIES BY COUNT - MAXIMUM PENALTY:

Count 1 18 U.S.C. § 286:

A term of imprisonment which may not be more than 10 years; a fine not to exceed \$250,000.00, or both a fine and imprisonment; a period of supervised release not to exceed three years; an assessment fee of \$100.00; and a contribution to VWP.

Count 2 18 U.S.C. § 1028(a)(7):

A term of imprisonment which may not be more than 5 years; a fine not to exceed \$250,000.00, or both a fine and imprisonment; a period of supervised release not to exceed three years; an assessment fee of \$100.00; and a contribution to VWP.

ELEMENTS OF THE OFFENSE(S):

Count 1 18 U.S.C. § 286

Elements: From the Eleventh Circuit Jury Instructions Instruction 11.1

1. Two or more people in some way agreed to try to accomplish a shared and unlawful plan;
2. The Defendant knew the unlawful purpose of the plan and willfully joined in it; and
3. The plan was to defraud the Government by obtaining the payment or allowance of a claim based on a false or fraudulent material fact.

Count 2 18 U.S.C. § 1028(a)(7)

Elements: From *United States v. Bonilla*, 579 F.3d 1233 (11th Cir. 2009)

“A person commits identity theft in violation of § 1028(a)(7) if he or she (1) “knowingly transfers, possesses, or uses”; (2) “without lawful authority”; (3) “a means of identification of another person”; (4) ‘with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.’” *United States v. Bonilla*, 579 F.3d 1233, 1242 (11th Cir. 2009)

“The production, transfer, possession, or use prohibited by this section is in or affects interstate or foreign commerce, including the transfer of a document by electronic means; ...”

18 U.S.C. § 1028(c)(3)(A)

“[A]s a result of the offense, any individual committing the offense obtains anything of value aggregating \$1,000 or more during any 1-year period;”

18 U.S.C. § 1028(b)(1)(D)

W. Brent Woodall, Assistant United States Attorney, and Valerie Murry Smedley, Esq., attorney for the defendant, pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended, have, with the authorization of the undersigned defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Information herein and a Plea Agreement has been reached by said parties. The parties understand that, if the terms of the Plea Agreement are not accepted by the Court, the defendant will be allowed to withdraw the defendant's plea of guilty and proceed to trial. If the Court accepts this agreement, however, and defendant thereafter breaches this agreement, his guilty plea may not be withdrawn.

GOVERNMENT'S PROVISIONS

C.S. 1. Upon entering a plea of guilty by the defendant to the offenses charged in Count 1 & Count 2 of the ~~Information~~ ^{Ind. ~~Information~~ W.B.W.}, the attorney for the Government will agree that a two-level reduction in the applicable offense level pursuant to U.S.S.G. § 3E1.1(a) for the defendant's acceptance of responsibility is appropriate, so long as the defendant does not obstruct justice or otherwise fail to accept responsibility for the offense conduct. Should the Government find the defendant assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby

permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, and if the defendant otherwise qualifies, the Government will move at sentencing for a further reduction of one level, pursuant to U.S.S.G. § 3E1.1(b). Determination of whether the defendant met her obligation to qualify for the reduction pursuant to U.S.S.G. § 3E1.1 is at the sole discretion of the Government.

2. The Government reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offense and the defendant's background.

3. The parties have reached no agreement on any other Guidelines issues.

4. The Government agrees that a sentence no greater than the middle of the applicable guideline range would be appropriate in this case.

5. The Government agrees to dismiss Counts 3 through 8 of the Indictment.

6. The Government agrees that, at trial, it would be able to establish that the Defendant's participation in this conspiracy was limited to helping obtain personal identifying information from the State of Alabama Department of Human Resources, Vinson Guard Service, Inc., and a Montgomery, Alabama public high school.

DEFENDANT'S PROVISIONS

1. The defendant agrees to the following:

a. To plead guilty to Counts 1 and 2 of the Indictment.

b. Not to commit any other federal, state, or local offense while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering, or facilitation of any other criminal activity. Determination of whether defendant's conduct is a violation of this provision is at the complete

discretion of the Government.

c. The defendant recognizes that the facts used to determine the defendant's Guidelines offense level and sentence will be found by the Court at sentencing by a preponderance of the evidence and that the Court may consider any reliable evidence, including hearsay.

FACTUAL BASIS

Between on or about June 13, 2010 and March 25, 2011, the defendant willfully entered into a conspiracy with at least two other people to defraud the United States by obtaining and aiding to obtain the payment and allowance of false, fictitious, and fraudulent claims. The goal of the conspiracy was to obtain payments of refunds which were generated by false tax returns containing fraudulent material facts. The false tax returns were filed by other members of the conspiracy. Prior to willfully entering into the conspiracy, the defendant knew of the unlawful purpose of the plan.

Also between on or about June 13, 2010 and March 25, 2011, the defendant knowingly transferred, possessed, and used, without lawful authority, the means of identification of M.M. with the intent to commit, and to aid in connection with the theft of government property. As a result of this offense, the defendant and at least one other conspirator received things of value which totaled \$1,000.00 or more during the period of June 13, 2010 and March 25, 2011. The use of the means of identification of M. M. travelled affected interstate commerce when it was transmitted as part of a document by electronic means across state lines.

SENTENCING GUIDELINES AND RECOMMENDATIONS

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an

opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence and the sentencing guidelines, if any, applicable to defendant's case will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant waives any constitutional challenge to the sentencing guidelines, waives indictment and trial by jury on all findings for sentencing, and stipulates that the Court may make all findings for sentencing and may make those findings by a preponderance of the evidence based upon any reliable evidence, including hearsay. Defendant understands that the Court is required to consider any applicable sentencing guidelines but may depart from these guidelines under some circumstances and may vary from these Guidelines in any case. Defendant acknowledges that defendant and defendant's attorneys have discussed the sentencing guidelines and defendant understands how the guidelines are applicable to defendant's case.

18 U.S.C. § 3553(a)

The defendant acknowledges that counsel for the defendant has conferred with the defendant prior to the signing of this plea agreement and advised the defendant that the Court, at sentencing, will consider the factors set forth in 18 U.S.C. § 3553(a), and explained to the defendant each of those factors specifically including (1) the nature and circumstances of the offense and the history characteristics of the defendant; the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) the need for deterrence; (3) the need to protect the public; (4) the need to provide the defendant with needed educational or vocational training or medical care; (5) the kinds of sentences available; (6) the need to avoid unwanted sentencing disparities; and, (7) the need to provide restitution to

victims.

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

1. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. Defendant further expressly waives the right to appeal the conviction and sentence on any other ground and waives the right to attack the sentence in any post-conviction proceeding. This waiver does not include the right to appeal or collateral attack on the grounds of ineffective assistance of counsel and prosecutorial misconduct.

2. The government does not waive its right to appeal any order dismissing the Indictment, the sentence imposed in this case, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to 18 U.S.C. § 3742(b), the defendant is released from this waiver as to any issue the defendant may raise pursuant to 18 U.S.C. § 3742(a).

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

1. The defendant, before entering a plea of guilty to Counts 1 and 2 as provided for herein by said Plea Agreement, advises the Court that:

a. The discussions between the attorney for the Government and the attorney for the defendant towards reaching an agreed plea in this case have taken place with the defendant's authorization and consent.

b. The defendant further understands that, pursuant to 18 U.S.C. § 3013, said \$100.00 assessment fee is to be paid by the defendant on the date of sentencing and that, if a fine

is imposed by the Court at sentencing, the defendant shall meet with a member of the Financial Litigation Section of the United States Attorney's Office on the day of sentencing and complete a written personal financial statement setting forth the defendant's assets and liabilities as of the date of the offense. The defendant will make an honest, good faith effort to pay said fine as directed by the Financial Litigation Section of the United States Attorney's Office. The defendant further understands that by completing the financial statement, the defendant is representing that it is true and accurate to the best of the defendant's information, knowledge, and belief.

c. The defendant understands that the defendant has a right to be represented by an attorney at every stage of the proceedings against the defendant herein and is represented by the defendant's undersigned attorney.

d. The defendant understands that the defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right to call witnesses in the defendant's own behalf, and the right not to be compelled to incriminate the defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the defendant waives the right to a trial by jury or to a trial before the Court.

e. The defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. The defendant further understands and advises the Court that the Plea Agreement as set forth herein and the plea to be entered by the defendant as a result thereof is voluntary on the defendant's part and is not the result of any force or threats or of any promises apart from the aforesaid Plea Agreement. The defendant further advises the Court that the Plea Agreement set forth herein is the result of prior discussions between the attorney for the Government and the attorney for the defendant, all conducted with the defendant's authorization, knowledge, and consent.

g. The defendant further advises the Court that the defendant's understanding of this Plea Agreement is as set forth in this document.

h. The defendant further understands that the Government can only make a recommendation, which is not binding upon the Court. However, if the Court does not accept the plea agreement, the defendant would be permitted to withdraw the defendant's plea, if the defendant so chooses.

i. The defendant further advises the Court that the defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crime charged in the Information herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the defendant. However, the defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Information herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the defendant under oath, on the court record, and in the presence of counsel.

j. The defendant is satisfied that defense counsel has been competent and effective

in representing defendant.

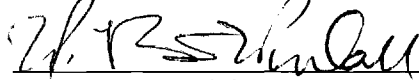
2. The undersigned attorneys for the Government and for the defendant represent to the court that the foregoing Plea Agreement is the agreement of the parties that has been reached pursuant to the Plea Agreement procedure provided for in Rules 11(c)(1)(A) and 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended. The attorney for the defendant further advises the Court that the defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the defendant has been advised of the defendant's right to plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the defendant; and that if the defendant pleads guilty, there will not be a further trial of any kind. Further, the defendant has been advised that if the defendant pleads guilty, the Court may ask questions about the offense to which the defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the defendant in a civil or criminal proceeding, but that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

3. The defendant understands that the U.S. Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the defendant's conduct related to the offense to which the plea is offered, as well as the defendant's criminal history. The offense level or criminal history category, as calculated by the Probation Officer and determined by the court, may differ from that projected by defendant's counsel or the U.S. Attorney.

This 2nd day of May, 2012.

Respectfully submitted,

GEORGE L. BECK, JR.
UNITED STATES ATTORNEY



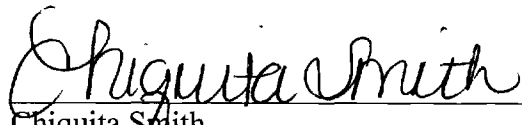
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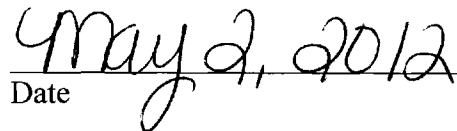


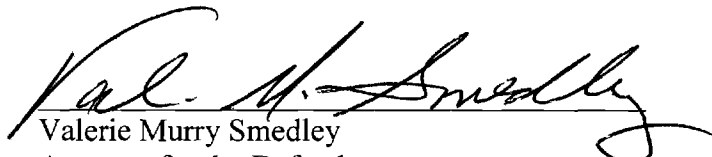
LOUIS V. FRANKLIN, SR.
CHIEF, CRIMINAL DIVISION

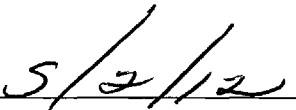
I have read the foregoing Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement that has been reached.

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL.


Chiquita Smith
Defendant


Date


Valerie Murry Smedley
Attorney for the Defendant


Date